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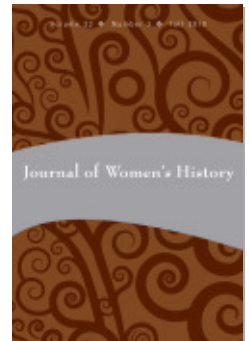
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Family Ideals, Colonialism and Law

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Family Ideals, Colonialism and Law

Göran Therborn. *Between Sex and Power: Family in the World, 1900–2000*. New York: Routledge, 2004. xii + 379 pp.; tables. ISBN 0-415-30078-9 (pb).

Arland Thornton. *Reading History Sideways: The Fallacy and Enduring Impact of the Developmental Paradigm on Family Life*. London: University of Chicago Press, 2005. x + 312 pp. ISBN 0-226-79860-7 (cl).

Tamara Loos. *Subject Siam: Family, Law and Colonial Modernity in Thailand*. Ithaca: Cornell University Press, 2006. x + 212 pp.; ill. ISBN 0-8014-4393-8 (cl)

Brett L. Shadle. *“Girl Cases”: Marriage and Colonialism in Gusiiland, Kenya, 1890–1970*. Portsmouth, NH: Heinemann, 2006. xliii + 256 pp.; ill. ISBN 0-325-07094-6 (pb).

Mytheli Sreenivas. *Wives, Widows, and Concubines: the Conjugal Family Ideal in Colonial India*. Bloomington: Indiana University Press, 2008. xiii + 169 pp. ISBN 0-253-21972-5 (pb).

Kenneth M. Cuno

Nearly half a century ago, in the heyday of Parsonian functionalism, the sociologist William J. Goode argued that industrialization and urbanization were promoting similar changes in family life globally.¹ The trend was toward the “conjugal family,” which also happened to be the ideal family form in the late-twentieth-century West. The conjugal family consists of a couple and their children. Its members are free of formal obligations toward elders or an extended kin group, and its children are relatively autonomous in their choice of spouses. Subsequent developments cast Goode’s perspective in doubt. Historians discovered that such families, rather than being a consequence of industrialization and urbanization, were predominant in Northwestern Europe centuries earlier. Since then there has been growing recognition that the “modern” conjugal family is to some extent an idealized version of the historic Northwest European pattern. Nor has the conjugal family triumphed in every newly industrializing and urbanizing society. It is even losing its preeminence in Europe and North America, which, ironically, have begun to deviate from the “modern” ideal. Nevertheless, the conjugal family ideal continues to be central to discourses

of modernity. Moreover, its promotion in place of alternate family forms, especially in non-western societies, has often been justified by the association of the conjugal family with relatively higher status for women.

Each of the books under review addresses the question of historical change in family forms, what promoted change and the implications of such change for women. The role of the modern regulatory state and of the law in promoting change in family systems, both intentionally and inadvertently, is another common theme. Göran Therborn, a sociologist, and Arland Thornton, a demographer, offer studies of global change that cover some of the same ground but differ in perspective. Therborn is interested in measuring major long-term shifts in family systems, while Thornton focuses on the influence of developmentalist ideas in promoting these and other changes in family life. Historians Tamara Loos, Brett Shadle, and Mytheli Sreenivas present case studies of the re-envisioning of family life and the rewriting of family law in Siam, Kenya, and India that both amplify and complicate the issues raised by Therborn and Thornton.

Göran Therborn's *Between Sex and Power* presents a "global history of the family" since 1900 in three thematic sections that address the decline of patriarchy, the changing roles and meanings of marriage, and changes in fertility. Each section compares the past century's developments within five major family systems: sub-Saharan Africa, Europe and North America, East Asia, South Asia, and West Asia-North Africa. There also are two interstitial systems: Southeast Asia, where Confucianism, Islam, and Catholicism are "moderated" by Buddhism and Malay customs; and "Creole" (Latin) America, where African, European, and Native American cultures melded.

Therborn's dominant theme is the retreat of patriarchy—the power wielded by elder men over women and younger men—as sanctioned in laws governing marriage and the rights of women, men, and children within the family. Indices of fathers' and husbands' authority, such as patrilocal marriage, arranged marriage, polygyny, and formalized rules of wives' and children's obedience, eroded the most in liberal Europe and North America, followed by Eastern Europe and East Asia. Twenty-first century Europe and North America have reached "post-patriarchy," which Therborn defines as "adult autonomy from parents and equal male-female family rights," though not necessarily gender equality (127). Patriarchy remains entrenched in much of South, Central, and West Asia, and Northern and Sub-Saharan Africa. Trends in marriage and fertility show a similar unevenness. Northwestern Europe and its cultural extensions were and remain different from the rest, with relatively later and less universal marriage, and greater autonomy in the choice of spouses by the young. Since 1970, the West has also distinguished itself with high divorce rates and a decline in formal marriage (partly due to informal partnering). Toward the end of

the century fertility was declining worldwide, but the trend was much more pronounced, again, in the West.

Therborn rejects the essentially materialist modernization paradigm of Goode, placing more emphasis on the role of ideology and sociopolitical movements. Secularization and democratization contributed to "de-patriarchalization." At the beginning of the century, a still largely rural and pre-industrial Scandinavia took the lead in enacting egalitarian family laws. The feminist movement, socialism in all its forms, secular liberalism ("mainly of Protestant Christian or Jewish—seldom Catholic—provenance" [77]) and anticolonial nationalism all acted to erode patriarchy. Despite his rejection of the modernization paradigm and his often nuanced empirical discussion, the old traditional/modern dichotomy creeps back in. "Post-patriarchy" is the *telos* in this global history of the family, and as with Goode's supposedly triumphal conjugal family, the trend is toward greater individual autonomy, especially for women and youth. Therborn attributes the resilience of patriarchy in West Asia and North Africa to "religious backlash" against "secular modernization" and "the weakness and venality of the secular forces" that are held in check by American-Israeli hegemony, an uncharacteristically simplistic argument (115). The resilience of patriarchy in South Asia and sub-Saharan Africa is simply not explained. The contribution of secularism to "de-patriarchalization" is also debatable, since religion continues to be influential in the postpatriarchal United States. Similarly, the uneven path of liberal-democratic and communist states toward egalitarian family law belies a simple connection between democratization and "de-patriarchalization."

Arland Thornton's *Reading History Sideways* is an exposition of the influence of developmentalist thought on the study of family life and in promoting family change. In it, he argues two main points. The first is that the study of the family has been strongly influenced by a "developmental paradigm," or "a model of history that assumes that all societies are on the same pathway or trajectory of change, with each going through the same stages of development" (3). The corollary, "reading history sideways," is Thornton's term for the European tendency to attribute differences between their own and other societies to different stages of development. Enlightenment and post-Enlightenment scholars read history sideways "to construct versions of, or myths about, the history of family life in the Western world," the most important of which was the transition from complex family forms to conjugal or nuclear families due to industrialization (6). As I noted earlier, this supposed transition was a pillar of the modernization paradigm upheld by Goode's generation of scholars. Thornton amply documents the influence of developmentalist thinking in the foundational scholarship of Locke, Malthus, Le Play, Morgan, and Westermarck on the family. Begin-

ning with the Scottish Enlightenment, the status of women was identified as an indicator of social progress. Not only foot binding, widow immolation, and female infanticide were condemned, but also polygyny, veiling, child marriage, and divorce. The performance of heavy labor by women was disapproved, and drew comparisons between the status of women and slaves. Similar ideas informed early feminist writings. John Stuart Mill asserted in "The Subjection of Women" (1869) that the condition of women was "the surest test and most correct measure of the civilization of a people or an age" (166).

Thornton's second argument is that the developmental paradigm has been a force for change in many areas of the world. As has been noted, social scientists understood the Northwest European family pattern to be an effect as well as a cause of modernity. The "modern" family system is thus "one that emphasizes individualism, the high status of women, mature marriage, marriages arranged by the couple, the autonomy of children, and small households consisting primarily of parents and children ... in contrast to a traditional family with an emphasis on the family collective, little individualism, large households, parents and children sharing residences with grandparents and married aunts and uncles, marriages arranged by parents, a young age at marriage, and the low status of women" (8). The supposed causal relationship between modern family life and modern ("industrialized, urbanized, highly educated, highly knowledgeable, and wealthy") society gave it a powerful appeal. While industrial society requires no particular family system, "the desire for social and economic improvement" and the perception of such a connection have motivated change (159).

Rather than wholesale adoption of the Western family model, the result has usually been hybridization, along with resistance to what are perceived to be alien cultural values. But even nativist assertions of indigenous family values tend to be influenced by developmental idealism, for example Islamist writings that endorse women's education and monogamous and companionate marriage (237). Colonial, non-colonial, and postcolonial governments have all promoted "modern" family ideals through education and the media.

Therborn and Thornton demonstrate, in different ways, the impact of developmental idealism in shaping "modern" family life through legal reforms, education, and the media. The colonial conditions in which those ideas and reforms spread do not receive particular emphasis. The latter three books under review focus on the creation of legal structures and the writing of legislation governing the family in the context of colonial modernity. In their studies of Siam (renamed Thailand in 1939), Kenya, and India, Loos, Shadle, and Sreenivas observe how the imposition and adaptation of European legal structures and norms have had a significant impact

on family life—indeed, a common theme is the intervention of the state in defining and regulating family relationships. Each author shows how the process of legal change was politically determined, and not a simple matter of “progress” and “modernization.” Each discusses the corollary use—by colonial officials and indigenous reformers as well as conservatives—of the idea that a society’s cultural essence is located in the domestic realm; hence the debate over family law often turned on the preservation or recovery of indigenous “tradition.” The authors eschew narratives of foreign dominance and national resistance, showing that indigenous actors played a role along with international or colonial officials in constructing the modern legal systems in Thailand, Kenya, and India, and that none of those groups was uniform or unchanging in its outlook.

Loos’ *Subject Siam* is a study of the construction of modern Siamese/Thai subjectivity, central to which, she argues, are relations of gender, public law, and the position of the Malay Muslim minority. Siam was one of a handful of non-Western countries including Turkey, Japan, and China that were never formally colonized, yet which adopted legal systems in conformity with the “civilized” standards of Europe, out of a desire to remove the unequal treaties imposed on them by the Euro-American powers and to be accepted as equals in international relations. The Bowring Treaty of 1855 imposed a regime of legal extraterritoriality for the citizens of “civilized” states that remained in place until after the completion of Siam’s Civil and Commercial Code in 1935. The laws governing the family and inheritance were the last parts of the Code completed. The new family law made monogamy the accepted form of marriage, as was done earlier in Meiji Japan and republican Turkey, and later in communist China. However, an exception was made in the four southern provinces bordering Malaya, where the family affairs of the Muslim population are adjudicated under a version of Islamic law.

Legal pluralism, according to Loos, is “a hallmark of colonial states” (74). It is a hierarchical system that subjects different parts of a population (ethnically or religiously defined) to different laws. Although Siam was not colonized, its sovereignty was constrained by the regime of legal pluralism imposed by the unequal treaties; yet Siam also imposed legal pluralism in its Muslim provinces.² Whereas the norms for commercial, criminal, and civil law were considered universal, in colonial and ethnographic discourse—and often in anti-colonial, nationalist discourse—religious and family practices were regarded as sources of cultural identity and social stability. Thus the colonial powers, with some exceptions, did not target the religious and family practices of their subjects for reform. Nor did they use their influence in non-colonized states like Siam to induce reforms in family life, unlike the pressure they brought to bear in favor of the codification of

criminal, commercial, and civil law. However, as Thornton also noted, the persistence of practices that deviated from the bourgeois European family ideal marked these societies as backward—as comparatively less evolved than Western societies. Loos writes: “As in directly colonized countries, jurisdiction over Siam’s Buddhist-derived laws on divorce, polygynous marriage, adultery, and inheritance was protected from Westernized legal intervention. However, the same practices that were sheltered from change because they reflected the allegedly authentic cultural identity of the Siamese were ideologically deployed by foreign powers as evidence of Siam’s uncivilized status. This justified the perpetuation of a plural legal system, which granted legal and economic privileges to many foreigners, Asian and European, in Siam” (100). At the beginning of the twentieth century the Siamese monarchy applied the same logic in creating a system of Islamic family law courts for the Muslim provinces, which would eventually work alongside the national court system. Separate courts were not demanded by the Muslims at the time, and they were hardly traditional. Following the examples of British Malaya and the Dutch East Indies they applied a mixture of Islamic law and custom (*adat*). But over time, the Islamic courts became so integral to the identity of Thai Muslims that they protested the temporary removal of them in the 1940s.

A similar process of “traditionalization” occurred in discussions of the family and the practice of polygyny among the Buddhist majority in Siam. Here (as in Japan, Turkey, and China), a segment of the indigenous elite advocated reform of the family as necessary for the modernization of the society, and their efforts produced resistance from other elements claiming to defend the authentic indigenous culture and its practices. Like Islam and Hinduism, Buddhism in Siam favored no particular form of marriage, though polygyny was integral to the premodern political system. Royal polygyny insured a pool of princes to serve in the administration, and “men in positions of power formed political alliances with one another through polygynous marriages and demonstrated masculine virility through their numerous wives and children” (7). The political role of polygyny declined with the development of the modern state and the growth of a cadre of civil servants of commoner origin produced through education. However, the civil servants adopted polygyny due to its association with official power. Though it was strongly criticized in the indigenous press and by foreigners, the kings’ ministers were reluctant to tamper with a social practice that conservatives now defended as part of traditional culture. It was only after a coup ended the absolute monarchy that a newly established parliament passed the 1935 law making monogamy the only legitimate form of marriage.

Public (and intramural governmental) debates over polygyny were most intense in the two and a half decades before the family law. King Vajiravudh (r. 1910–25) took a leading role in it, promoting an ideal modern family as a prototype for the nation. Before 1935, a married woman was recognized as a major wife if her marriage was arranged through her guardians and bridewealth was paid. Minor wives “included those obtained through sexual intercourse, short-term liaison, and cohabitation, even in some cases in which the woman did not consent” (138). Slave wives were women redeemed from indebtedness and supported by their husbands. The status of a wife as major or minor determined her inheritance portion and the rank of her children. This situation became confused by the early twentieth century. Slavery was abolished by 1905, though this appears to have contributed to the number of women working in brothels, as the former slaves sought to support themselves. The growing number of salaried officials also increased the demand for commercial sex. The court cases Loos examined illustrate the problems arising from the ambiguity of what constituted marriage. In his laws governing the behavior of government officials and in his public writings, Vajiravudh, while not outlawing polygyny, drew a sharp line between legitimate wives (and hence virtuous women) and other liaisons with disreputable women. Laws governing the use of names and forms of address more closely defined women according to their marital status.

Siam's official adoption of monogamy in 1935 could be read as the triumph of Western-inspired modernity. However, as Thornton notes, Western family ideals were rarely adopted in their entirety, and the modern Thai family system retained elements of preexisting practices. As in the Turkish republic, monogamy became the only legitimate form of marriage but plural marriage was not criminalized. Men continued to have minor wives and children born out of wedlock were legitimized.

The title of Brett Shadle's study of the marriage system in the Gusiiland region of Kenya under British rule comes from a colonial official's reference to elopements, abductions, rapes, and runaway women as “girl cases.” The infantilizing reference was to marriage-aged women. The bidding up of bridewealth, which put marriage beyond the reach of many young men, caused an upsurge of such cases from the late 1930s through the early 1960s. The increase in bridewealth, traditionally paid in cattle, was a consequence of colonial capitalist development, which raised the incomes of certain well-positioned households above most others. Young women's right of consent in marriage was at stake in the resulting “girl cases.”

Marriage was nearly universal in Gusi society. One's success in life was measured in “wealth and people.” “The basic building block was marriage,

from which sprang legitimate children, agricultural surplus, a polygamous homestead, and perhaps clients" (1). Bridewealth legitimated marriage, and it should be sufficient to enable the bride's brother or father to marry, hence in normal times the number of cattle given as bridewealth tended to equalize. Although feminist campaigners in interwar Britain equated bridewealth with the "sale" of women, akin to enslaving them, women exercised consent in more than one way in the pre-colonial system. In addition to the payment of bridewealth, marriages were solemnized in a later ceremony called *enyagi*. Prior to *enyagi* a father could end the marriage by returning the bridewealth, or a woman could refuse to go through with the *enyagi* ceremony. A woman could elope with a lover, and her marriage might be legitimated later by her father's agreement to accept bridewealth. If all else failed a woman wanting to avoid an undesired marriage or unhappily married could run away to a clan on poor terms with her husband's or father's clan. "With no overarching authority in the precolonial highlands, fathers and husbands had little chance of tracking down a woman who had run to an enemy clan" (140).

Colonial rule brought such "overarching authority" to Gusiiland in the early twentieth century. Indirect Rule empowered senior African men to a greater extent than before. Chiefs exercised legitimate coercion in the form of club-wielding *askaris* (police). Local Native Councils, established in 1925, levied taxes, regulated markets, and made decisions on infrastructural spending. In 1937, the native courts were reorganized and given the power to enforce "customary law," which was constructed using African elders as informants. During the bridewealth crisis and the upsurge in "girl cases," African fathers and husbands could rely on the state to enforce their authority over younger men and women. Abductors were prosecuted by fathers and their victim daughters. In cases of elopement a man could be charged with adultery, which was criminalized in the 1930s, and runaway women were "dragged" back to their fathers and husbands by the police.

Interwar policy aimed to maintain the stability of "traditional" African societies, even while transforming them economically. Family stability was believed to be the key to that, hence officials were concerned to support the enforcement of "customary law," even when it deviated from British norms. Functionalist anthropology supported the logic of preserving "tribes," which was understood to mean preserving patriarchal authority. "The power seniors wielded over juniors, and men over women, was [believed to be] the glue by which societies and tribes were held together" (49). Missionaries' complaints about the restrictions enforced on African women, including the "dragging" of runaway women back to their fathers and husbands, stimulated a campaign in Britain against their "enslavement." As in Siam, the debate over family law pitted reformers against preservationists among

Africans as well as the British. Each side appealed to an idealized vision of the family and of its role in society. After the Second World War, colonial policy shifted from preserving traditional society to prioritizing development, and put new emphasis on the welfare and education of women. At that point, colonial administrators ceased to allow the forcible return of runaway women. Substantive reform in family law could not be attempted until independence, due to the colonial authorities' disinclination to intervene directly in this area. However, post-independence efforts to enact a family law have been hampered by the defenders of African patriarchal "traditions," some of which are colonial legacies, as Shadle's work shows.

The Tamil speaking region, formerly part of the Madras Presidency and today's Tamil Nadu province, is the site of Mytheli Sreenivas' *Wives, Widows, and Concubines*, a study of the conjugal family ideal in modernist debates in colonial India. Successive chapters discuss the decoupling of family and politics and the redefinition of family and kin under colonial rule, the merchant and professional classes' adoption of the conjugal family ideal, alternate constructions of modern marriage promoted by Indian and Dravidian nationalists, and the promotion of emotional bonds in marriage by women's magazines. These debates "produced new normative visions of family life" and "rearticulated" the status of women (6).

Under colonial rule the patriarchal, joint family households of the elite ceased to do political work, becoming landlord *zamindari* families. The family was subsequently redefined through legal intervention brought on by disputes over inheritance rights to the jointly held property. The courts now distinguished legitimate wives and their children from "concubines" and their children on the basis of whether a proper marriage ceremony had been performed. The drawing of new boundaries between legitimate wives and less respectable consorts, with consequences for legitimacy and heirship, is comparable to what occurred in Siam under Vajiravudh. And as in Siam, even the relatively privileged legal wives were disadvantaged, for within the *zamindari* class the restriction of land titles to men "empower[ed] upper caste men vis-à-vis upper caste women as well as lower castes of both genders" (27). The colonial government allied with the *zamindari* class, upholding joint property based upon a selective reading of Hindu scriptures.

The emergent Tamil mercantile and professional classes adopted the ideal of "a smaller family, centered on the property and affective relations of a monogamous husband and wife" (46). They backed the failed Hindu Coparceners' Partition Bill, introduced in the Madras legislature in 1916, which would have allowed a co-owner to separate his share unilaterally from a jointly owned property. Proponents of the bill associated individual ownership with economic development, modernity and the conjugal family. They placed the conjugal couple ahead of the husband's agnatic relations,

raising the possibility of women inheriting property in the absence of male heirs. In 1917, they petitioned to have the Married Women's Property Act of 1874 apply to Hindu women (the original act exempted Hindus, Muslims, Buddhists, Sikhs and Jains). Though invoking women's right to property ownership, this was an all-male discourse that did not envision women as "agents or subjects" (55).

After the First World War, conjugality was "embedded in the language of nationalist politics" (67). Indian nationalists focused their efforts on eliminating child marriage by raising the age of consent, which was set at age fourteen for girls in 1929. Dravidian nationalists took aim at marriage itself. The Self Respect Marriage movement rejected Brahmanic rituals in favor of a simple ceremony centering on the marital vows, which emphasized consent. However, the courts would only recognize as legitimate a marriage performed according to the traditional rituals, and the movement lost impetus before independence. As in Siam and in Africa, family ideals were justified with appeals to the ancient, precolonial culture. Nationalist reformers "selectively appropriate[d] Brahmanical norms to recuperate an Indian 'tradition' of monogamy" (44), and women's rights groups asserted that in the past Hindu women occupied a "high place" and had property rights (58). "Orthodox" Hindus rejected raising the age of consent, arguing that pre-puberty marriage was essential to Hinduism, along with the joint family.

Eschewing a progressive interpretation, Sreenivas notes that the conjugal family did not completely eclipse the joint family. In an important correction to Goode, Therborn, and Thornton, moreover, she contests the association of the conjugal family with women's emancipation. The conjugal family ideal was invoked to challenge the patriarchal joint family, but "the emphasis on conjugality did not overthrow the power of men within their families. Instead, in some cases the new norms even solidified their control" (7).

These three monographs share a number of themes and emphases which could be the basis of further comparative studies. Three examples will have to suffice here. One important theme is that the polygynous joint family households of the elite were integral to the precolonial political order in Siam and India, and to the socioeconomic order in stateless precolonial Gusiiland. "Polygyny performed vital political work," in Loos's apt words (102, 110).³ The (re)construction of modern states—that is, states on the European model—entailed the privatization of the family, its separation from politics and its subjection to state regulation. Political power "was no longer constituted in and through relations among households," as Sreenivas put it (18). The decoupling of family and politics arguably made polygyny obsolete and strengthened the valence of the conjugal family ideal. This connection

between structural political change and family reform was not noticed by Therborn or Thornton, and it deserves much more attention.

Another theme common to the three studies is the distinction that increasingly was drawn between legitimate wives (and hence respectable women) and other consorts as modern family law systems developed. In Siam and Gusiiland a proper marriage was contingent on the payment of bridewealth, and there as well as in India it also required a proper ceremony. These distinctions were sharpened even in Kenya, where elopement was branded and for a time criminalized as "adultery." It thus appears that if the status of some women was elevated with the legal institution of monogamy, other women were defined as disreputable and received less protection from the courts. Moreover, as Sreenivas emphasizes, patriarchy did not disappear in the modern conjugal family, but was reconstituted.

One other common theme that should be highlighted is the transformative impact that the imposition or adoption of European legal structures and procedures had on the adjudication of family law. This was most marked in India and Kenya, where colonial magistrates and administrators treated what they called "Hindu law" and "customary law" as if it were the common law of those countries. It is also implicit in Loos' discussion of the "Islamic law" applied in the southern provinces of Thailand, which still is reliant on translations of texts made by British and Dutch colonial officials in the nineteenth century.

NOTES

¹William J. Goode, *World Revolution and Family Patterns* (New York: The Free Press, 1963).

²Siam's dualistic status in this regard recalls other, similar dualisms, such as Egyptian colonization in Sudan and Ottoman statesmen's constructions of their rural subjects as primitive and uncivilized. See Eve Troutt Powell, *A Different Shade of Colonialism: Egypt, Great Britain, and the Mastery of the Sudan* (Berkeley: University of California Press, 2003); Selim Deringil, *The Well-Protected Domains: Ideology and the Legitimation of Power in the Ottoman Empire, 1876–1909* (London: I.B. Tauris, 1998); Ussama Makdisi, *The Culture of Sectarianism: Community, History, and Violence in Nineteenth-Century Ottoman Lebanon* (Berkeley: University of California Press, 2000).

³See also Leslie Peirce, *The Imperial Harem: Women and Sovereignty in the Ottoman Empire* (Oxford: Oxford University Press, 1993).